

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

KWANG MIN AHN,

Plaintiff,

v.

NAK WON FOOD INC. and EUN HEE HA,

Defendants.

ORDER

17-CV-2331 (MKB) (ST)

MARGO K. BRODIE, United States District Judge:

Plaintiff Kwang Min Ahn commenced the above-captioned action on April 19, 2017, against Defendants Nak Won Food Inc. (“Nak Won Food”) and Eun Hee Ha, asserting claims pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) and the New York Labor Law (“NYLL”). (Compl., Docket Entry No. 1.) For the reasons explained below, the Court dismisses the case with prejudice for failure to prosecute.

I. Background

By Order dated May 8, 2018, Magistrate Judge Steven L. Tiscione directed Plaintiff to file a motion for default judgment against Nak Won Food by June 4, 2018. (Order dated May 8, 2018.) Plaintiff failed to do so. On June 20, 2018, Judge Tiscione directed Plaintiff to file either the motion for default judgment or a letter indicating why such a motion could not be filed by June 22, 2018. (Order dated June 20, 2018.) On June 21, 2018, Plaintiff filed a letter stating that “Plaintiff’s investigation has revealed that Nak Won [Food] is completely defunct and shuttered,” and that because “a motion for default against Nak Won [Food] would be futile . . . Plaintiff . . . request[ed] that [the Court] voluntarily dismiss this . . . action pursuant to Rule 41(a)(2).” (Letter dated June 21, 2018, Docket Entry No. 28.) Plaintiff docketed the letter as a

motion to dismiss. (*See id.*) By Order dated June 28, 2018, Judge Tiscione terminated the request and directed Plaintiff to refer to the Court's individual rules regarding motions to dismiss. (Order dated June 28, 2018.) On August 8, 2018, Judge Tiscione directed Plaintiff's counsel to file a status report by November 7, 2018. (Order dated Aug. 8, 2018.) On December 27, 2018, Judge Tiscione warned Plaintiff that if Plaintiff failed to either file a status report or move to dismiss the Complaint by January 11, 2019, he would recommend that the Court dismiss the action for failure to prosecute. (Order dated Dec. 27, 2018.) Plaintiff failed to do so.

By report and recommendation dated May 31, 2019, Judge Tiscione recommended that the Court dismiss the action with prejudice for failure to prosecute (the "R&R"). (R&R, Docket Entry No. 29.) No party has objected to the R&R and the time for doing so has passed.

II. Discussion

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F. 3d 758, 766 (2d Cir. 2002) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F. 2d 15, 16 (2d Cir. 1989) (per curiam))); *see also Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis,*

Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1).

III. Conclusion

For the reasons set forth above, the Court adopts the R&R and dismisses this action with prejudice for failure to prosecute. The Court directs the Clerk of Court to close this case.

Dated: February 20, 2020
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge